



COMPLYING WITH THE CHILDREN'S INTERNET PROTECTION ACT

I. INTRODUCTION

1. The Institute of Museum and Library Services establishes these guidelines to ensure that the agency's implementation of the Children's Internet Protection Act (CIPA) complies with the recent decision of the United States Supreme Court.¹ **Under CIPA, State Library Administrative Agencies (SLAA) must assure the Federal Government that no funds will be made available for public libraries and public elementary and secondary school libraries, that do not receive E-rate discounts, to purchase computers to access the Internet or pay for the direct costs of accessing the Internet unless the libraries have certified that they have Internet safety policies and technology protection measures, e.g., software filtering technology, in place. State Library Administrative Agencies must collect certifications from libraries subject to CIPA that apply to the States for Library Services and Technology Act (LSTA) funding.** Libraries that receive services at discount rates under section 254(h)(6) of the Communications Act of 1934 certify compliance under the E-Rate program and do not have to provide an additional certification under IMLS's Library State Grants program.

2. Public libraries subject to CIPA's filtering requirements that are not currently in compliance with the requirements must certify when applying for FY 2004 funds from State Library Administrative Agencies that they are undertaking efforts to comply by the following year. Public elementary and secondary school libraries must be in compliance with the CIPA requirements to obtain FY Year 2004 funding from the State Library Administrative Agencies, except to the extent such school libraries are eligible for and receive a waiver of the CIPA requirements pursuant to 20 U.S.C. § 9134(f)(4)(B)(iii). IMLS takes these steps to respond promptly to the Supreme Court's decision and to ensure that IMLS's State Grants Program continues to operate in accordance with federal law.

II. BACKGROUND

3. The Children's Internet Protection Act established new Internet Safety requirements for IMLS's State Grants Program. Under the State Grants Program, IMLS awards financial assistance to State Library Administrative Agencies, which, in turn, use the funds for State-wide activities or to make sub-grants to enhance local or regional library activities. Pursuant to 20 U.S.C. § 9134(f), which implements CIPA's provisions with respect to the Institute's State Grants program, SLAAs must provide assurance to IMLS that all LSTA State program funds will be used in accordance with CIPA's requirements. CIPA provides that:

(1) no funds made available under IMLS's State Grants program,

¹ *United States v. American Library Ass'n, Inc.*, No.02-361, 123 S.Ct. 2297, 2003 WL 21433656 (June 23, 2003).

- (2) for a public library, or a public elementary or secondary school library,
- (3) that does not receive services at discount rates under section 254(h)(6) of the Communications Act of 1934,
- (4) may be used to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet, *unless*
- (5) the library has in place a policy of --

- (a) Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; (II) child pornography; or (III) harmful to minors; and is enforcing the operation of such technology protection measure during any use of such computers by minors; and

- (b) Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are (I) obscene; (II) child pornography; and is enforcing the operation of such technology protection measure during any use of such computers.

Both the State Library Administrative Agencies and libraries seeking LSTA State Program funds must certify compliance with the law. While the State Library Administrative Agencies assure compliance to IMLS,² public libraries and public school libraries subject to CIPA, must certify compliance with the law as part of the application cycle for LSTA grant funds from the State Library Administrative Agencies.³ During the first program year after CIPA takes effect (Year 1), an applicant library must either certify compliance with CIPA's Internet safety requirements or certify that the library is undertaking actions to put in place an Internet safety policy that meets CIPA's requirements. For the second program year (Year 2), the library must certify compliance with CIPA's requirements, unless eligible for a waiver because of State or local procurement rules or regulations. *See, generally*, 20 U.S.C. § 9134(4)(B).

4. To implement CIPA's provisions, IMLS added a CIPA assurance to the State Library Administrative Agency application (the State's Five-Year Plan) for Program Year 2003. Program Year 2003, beginning on October 1, 2002, was the first program year following passage of CIPA for which IMLS could implement CIPA's requirements. IMLS provided the State Library Administrative Agencies with technical assistance and sample certifications to use with public libraries and public elementary and secondary school libraries when awarding Program Year 2003 funds.

² 20 U.S.C. § 9134(b)(6).

³ 20 U.S.C. §§ 9134(f)(1) and (4)(B).

5. Subsequently, a three-judge district court held that requiring public libraries to use filtering technology violated the First Amendment of the United States Constitution.⁴ It issued an order on May 31, 2002, holding Section 9134(f) facially unconstitutional and permanently enjoining IMLS from withholding federal funds from any public library for failure to comply with CIPA's provisions.⁵

6. In compliance with the district court's injunction, the Institute of Museum and Library Services suspended enforcement of 20 U.S.C. § 9134(f) with respect to public libraries, pending Supreme Court action.⁶ IMLS modified its Program Year 2003 certification requirements to reflect the district court's opinion. For Program Year 2003, the State Library Administrative Agencies were required to assure the Federal government that no funds would be made available to purchase computers to access the Internet or pay for direct costs associated with accessing the Internet for public elementary and secondary school libraries that did not comply with CIPA's requirements. For public elementary and secondary school libraries, Program Year 2003 was Year 1 of CIPA compliance.

7. On June 23, 2003, the Supreme Court issued its opinion reversing the judgment of the district court and finding that CIPA, on its face, is constitutional. The Supreme Court held that CIPA does not induce libraries to violate the Constitution because public libraries' Internet filtering software can be disabled at the request of a user and, therefore, does not violate their patrons' First Amendment rights.⁷ In upholding CIPA, the Supreme Court emphasized "the ease with which patrons may have the filtering software disabled," and that a patron who "encounters a blocked site...need only ask a librarian to unblock it or (at least in the case of adults) disable the filter."⁸ Under the LSTA program, disabling is permitted during use by any person. 20 U.S.C. § 9134(f)(3) (disabling permitted for both adults and minors). The plurality also highlighted the government's confirmation at oral argument that a "librarian can, in response to a request from a patron, unblock the filtering mechanism altogether," and further that a patron would not "have to explain ...why he was asking a site to be unblocked or the filtering to be disabled."⁹ Pursuant to Supreme Court rules, the decision in *United States v. American Library Association* will become effective no earlier than July 18, 2003.¹⁰

⁴ *American Library Association Inc. v. United States*, 201 F. Supp.2d 401 (E.D. Pa. 2002).

⁵ *Id.* at 496.

⁶ Section 1741(a) of CIPA, 114 Stat. 2763A-351, provides expedited review for constitutional challenges by a three-judge district court pursuant to 28 U.S.C. § 2284.

⁷ *United States v. American Library Ass'n*, 2003 WL 21433656 at *8 (plurality opinion).

⁸ *United Status v. American Library Ass'n*, 2003 WL 21433656 at *8 (plurality opinion).

⁹ *Id.* at *8 (quoting Tr. Of Oral Arg. 4).

¹⁰ Under the Supreme Court's rules, its decisions do not become effective until the Court sends a certified copy of the judgment to the lower court. The Court does not send the certified copy until at least 25 days after the entry of

III. IMPLEMENTATION

8. Consistent with the Supreme Court decision, IMLS lifts the suspension of enforcement of 20 U.S.C. § 9134(f) as it pertains to public libraries.

9. Consistent with the implementation framework established by Congress, IMLS will require State Library Administrative Agencies to provide assurance to IMLS of compliance with CIPA's provisions with respect to public libraries *and* public elementary and secondary school libraries. To receive Program Year 2004 IMLS State Program funds, each SLAA must assure IMLS that no funds made available under the State program for a public library or public elementary or secondary school library that does not receive E-rate services may be used to purchase computers used to access the Internet or to pay for the direct costs of accessing the Internet, unless the library has certified compliance with the applicable CIPA requirements.

10. To receive Program Year 2004 funds from the State Library Administrative Agencies, public libraries are subject to CIPA's Year 1 requirements. A public library must certify either that (1) the library is in compliance with CIPA's provisions, or (2) the library is undertaking steps to comply with CIPA in the next funding year.¹¹

11. Public elementary and secondary school libraries are subject to CIPA's Year 2 requirements in Program Year 2004. (Program Year 2003 was Year 1 with respect to CIPA compliance for these entities.) Accordingly, to receive Program Year 2004 funds from a State Library Administrative Agency, a public elementary and secondary school library must certify compliance with CIPA's requirements, or must seek a waiver of CIPA requirements. CIPA provides for a waiver of the certification requirements in the second year after the effective date of CIPA if state or local procurement rules or regulations or competitive bidding requirements prevent compliance. Consistent with this provision of CIPA, a public elementary or secondary school library that applies for LSTA State Program grant funds in FY 2004 may submit a waiver request if state or local procurement rules or regulations or competitive bidding requirements prevent compliance by the start of Funding Year 2004.

12. To assist the State Library Administrative Agencies with implementing CIPA's requirement of collecting certifications from public libraries and public elementary and

judgment. Sup. Ct. R. 45.

¹¹ For IMLS, CIPA first went into effect on October 1, 2003 (the application for the first program year following enactment). Because of the District Court's opinion on May 31, 2002, the Act was enforced solely with respect to schools. The State Library Administrative Agencies assured IMLS that no federal funds would be used to pay for direct costs associated with accessing the Internet or for computers to access the Internet for a public elementary or secondary school library that did not certify that it had an Internet safety policy in place or was taking steps to implement a policy with technology protection measures. The requirements of CIPA have not been enforced with respect to public libraries. The next program year for LSTA funding begins on October 1, 2003. This will be the first program year under CIPA with respect to public libraries.

secondary school libraries subject to the law, IMLS has prepared the attached technical assistance and sample certifications. Applicant libraries are required to provide CIPA certifications to the SLAA. A consortium or group applicant affected by the law must (1) collect and maintain on file a certification from each of the group's constituent libraries to which CIPA's conditions apply, and (2) provide a certification on behalf of the group to the SLAA.

13. State Library Administrative Agencies must continue to carry out the pertinent CIPA requirements with respect to Program Year 2003 funding as provided in the Program Year 2003 application to IMLS (in this case, the State's "Five-Year Plan"), and described in the Program Year 2003 technical assistance provided by IMLS.

IV. DEFINITIONS

14. The terms "child pornography," "harmful to minors," "minor" and "obscene" are defined in 20 U.S.C. § 9134(f)(7). The term "technology protection measure" is defined in Section 1703(b)(1) of the Children's Internet Protection Act.

15. For purposes of funding under the LSTA State Grants Program, the term "direct costs associated with accessing the Internet" refers to the costs of connecting to an Internet service provider ("ISP").

August 1, 2003